

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

FACET TECHNOLOGY CORP.,

Plaintiff,

v.

TOMTOM INTERNATIONAL B.V.,
TOMTOM, INC., AND TOMTOM NORTH
AMERICA, INC.,

Defendants

Civil Action No. 1:24-cv-00111-PB-TSM

DEFENDANTS' MOTION TO DISMISS UNDER FRCP 12(b)(6)

Defendants TomTom International, B.V., TomTom, Inc., and TomTom North America, Inc. (collectively, “Defendants”), by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), move to dismiss plaintiff Facet Technology Corp.’s direct infringement and induced infringement claims with respect to U.S. Patent Nos. 9,335,255 (the “255 patent”) and 9,671,328 (the “328 patent”) (collectively, “the Asserted Patents”).

Along with their Memorandum of Law and Exhibits A and B, which are incorporated by reference, Defendants state as follows:

1. Facet’s direct infringement and indirect infringement claims with respect to the Asserted Patents must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because (1) Facet does not allege and did not in fact mark its product or provide notice of direct infringement to any defendant for the Asserted Patents as required by 35 USC § 287(a) in order to collect damages or other remedies; (2) even if Facet provided

sufficient notice of direct infringement, the seven-year delay between such notice and the Amended Complaint should estop all Counts; (3) the claims as granted in the Asserted Patents are not supported by the written description as filed in violation of 35 U.S.C. § 112(b); and (4) Facet lacks standing to bring this suit.

2. Facet's indirect infringement claims with respect to the Asserted Patents should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because Facet does not allege and has not provided notice to any Defendant of any direct infringer whom any Defendant induced to infringe the patents-in-suit, prior to expiration of the patents-in-suit, as required by 35 U.S.C. § 271(b).
3. Local Rule 7.1(a): A supporting memorandum of law is filed contemporaneously with this Motion.
4. Local Rule 7.1(c): Given the dispositive nature of this Motion, Defendants have not sought Facet's assent.

WHEREFORE, Defendants respectfully request that this Court:

- A. Grant this Motion to Dismiss in favor of Defendants;
- B. Dismiss Facet's direct and induced infringement claims with respect to the '255 patent and the '328 patent; and
- C. Grant such other relief in favor of Defendants as may be just, equitable, and appropriate.

Respectfully submitted,

**TomTom International B.V., TomTom, Inc., and
TomTom North America, Inc.**

By Their Attorneys,

Gallagher, Callahan & Gartrell, P.C.

Dated: July 18, 2024

By: /s/ Matthew V. Burrows

Matthew V. Burrows, Esq. (NH Bar #20914)
214 North Main Street
Concord, NH 03301
603-228-1181
burrows@gcglaw.com

Wesley W. Whitmyer, Jr. (*pro hac vice*)
Alan Harrison (*pro hac vice*)
Henry M. Purtill (*pro hac vice*)
Kevin M. Musco (*pro hac vice*)
Whitmyer IP Group LLC
600 Summer Street
Stamford CT 06903
Tel: 203-703-0800
Fax: 203-703-0801
Email: litigation@whipgroup.com
aharrison@whipgroup.com
hpurtill@whipgroup.com
kmusco@whipgroup.com

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of this filing is being provided to counsel of record
via the Court's electronic filing system.

/s/ Matthew V. Burrows
Matthew V. Burrows (#20914)